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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/824,533	04/02/2001	Jane Nichols	240.062US1	9422

21186 7590 09/04/2002

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EXAMINER

DEWITTY, ROBERT M

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 09/04/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/824,533

Applicant(s)

NICHOLS ET AL.

Examiner

Robert M DeWitty

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 April 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-89 is/are pending in the application.
- 4a) Of the above claim(s) 26-31, 33, 45-50 and 82-89 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25, 32, 34-44, 51-81 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-89 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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### **DETAILED ACTION**

Claims 1-89 are pending in the instant application. Acknowledgement is made of Applicant's election of invention and species', filed 4/24/02.

### ***Information Disclosure Statement***

Applicant has not included dates for two references, 1. Christophers, E., et al. and, 2. Gilman, A.G., et al.

### ***Election/Restrictions***

1. Claims 26-31, 33, 45-50, and 82-89 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 7.
2. Applicant's election without traverse of hydrocortisone acetate, propylene carbonate, polyester fiber, acrylic ester copolymer, and fluorocarbon solution in Paper No. 7 is acknowledged.

### ***Specification***

3. The use of trademarks at claim 10 has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-25, 32, 34-44, and 51-81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hymes et al. (U.S. Pat. No. 6,348,212) in view of Ethier (U.S. Pat. No. 4,696,854) employed as a teaching reference, and Rolf et al. (U.S. Pat. No. 5,741,510).

Hymes relates to treating blisters of the skin by applying to the blister a flexible moisture-containing hydrophilic hydrogel patch (Abstract). In one embodiment, a therapeutic patch can consist of a flexible backing, an antimicrobial agent such as salicylic acid (claims 10 and 14, respectively) and a sizing agent (at col. 6, lines 33-34). The hydrogel layer applied to the backing comprises water or a polymer. A humectant is preferably employed such as polyhydric alcohol is employed to keep the adhesive layer moist (col. 2, lines 24-30). In another embodiment, the backing can be coated with a silicone release coating as described in U.S. Patent Number 4,696,854 (Ethier) incorporated herein (col. 6, lines 24-28) teaches that silicone layer reduces the porosity of fibrous substrates (see Ethier at col. 1, lines 38-45).

Hymes teaches that antimicrobials may be included in the hydrogel adhesive compositions. As the hydrogel compositions are comprised of water, it is believed that

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the antimicrobials are dissolved within the water in the formation of the hydrogel. An example of an antimicrobial used in the invention is salicylic acid, used in an amount of 2% by weight (Examples 9 and 10).

Motivation to use a silicon release coating as described by Ethier would have arisen because such use may be desirable (as taught by Hymes).

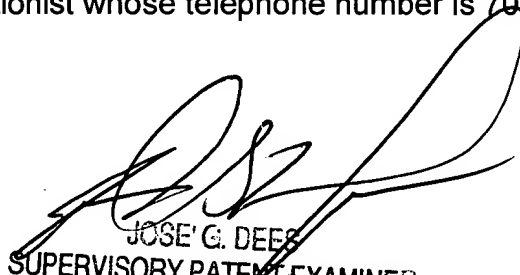
It would have been within the purview of one with ordinary skill in the art to use a medicament such as lidocaine in the adhesive patch. Rolf et al. teaches an adhesive patch containing methol, camphor, or lidocaine (col. 5, lines 25-37).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M DeWitty whose telephone number is 703-308-2411. The examiner can normally be reached on 9:00am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on 703-308-2411. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7924 for regular communications and 703-308-7924 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

RMD  
August 13, 2002

  
JOSE G. DEES  
SUPERVISORY PATENT EXAMINER

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